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November 26, 1996

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: Petition for Rule Making
Amendment of Section 73.202(b),
FM Broadcast Stations
(Laramie, Wyoming)

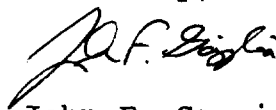
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Dear Mr. Caton:

Transmitted herewith for Rule Communications and Mount Rushmore Broadcasting, Inc. is an original and four copies of a Petition for Rule Making seeking the commencement of a proceeding to allot FM Channel 254A to Laramie, Wyoming. In order to eliminate mutual exclusivity between the two remaining applications now pending for Channel 244A at Laramie, Wyoming, it is requested that the Commission order the amendment of the application of Mount Rushmore Broadcasting, Inc. to specify Channel 254A in lieu of Channel 244A while maintaining cut-off protection for the application. In the event an expression of interest is received by the Commission for an additional Class A channel at Laramie, the enclosed petition shows that such a channel may be allotted.

In the filing of this joint petition, Thomas J. Hutton, Esq. is counsel to Mount Rushmore Broadcasting, Inc., and the undersigned is counsel to Rule Communications.

Sincerely,



John F. Garziglia

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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COMMUNICATIONS
DIVISION

In the Matter of)
)
Amendment of Section 73.202(b)) RM _____
FM Broadcast Stations)
(Laramie, Wyoming))

To: Chief, Allocations Branch

PETITION FOR RULE MAKING

Rule Communications^{1/} and Mount Rushmore Broadcasting, Inc.^{2/}, by its attorneys, pursuant to Section 1.401 of the Commission's rules, hereby seek the institution of a rule making proceeding to amend Section 73.202(b) of the Commission's rules, the FM Table of Allotments, to add Channel 254A to Laramie, Wyoming, and order the amendment of the application of Mount Rushmore Broadcasting, Inc. to specify Channel 254A in lieu of Channel 244A while maintaining cut-off protection for the Mount Rushmore Broadcasting, Inc. application. In the event that one or more expressions of interest are received in the course of this proceeding for an additional allotment at Laramie, Wyoming, it is noted that Channel 224A may be allotted to Laramie, Wyoming to accommodate those expressions of interest. The following changes are proposed to the FM Table of Allotments:

1/ Rule Communications is an applicant for FM Channel 244A at Laramie, Wyoming (FCC File No. BPH-960520MO), whose application is mutually exclusive with the applications of Mount Rushmore Broadcasting, Inc. (FCC File No. BPH-960520MK) and Magic City Media, Inc. (FCC File No. BPH-960520MJ).

2/ Mount Rushmore Broadcasting, Inc. is an applicant for FM Channel 244A at Laramie, Wyoming (FCC File No. BPH-960520MK) whose application is mutually exclusive with the applications of Rule Communications (FCC File No. BPH-960520MO) and Magic City Media, Inc. (FCC File No. BPH-960520MJ).

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Laramie, Wyoming	236C, 244A, 275C, 283C2, 288A	224A ^{3/} , 236C, 244A, 254A, 275C, 283C2, 288A

The allotment of Channel 254A, as well as the allotment of Channel 224A (if required for any additional expressions of interest), may each be made consistent with all spacing requirements contained in Section 73.207(b) of the Commission's Rules^{4/}. Attached to this petition are channel studies showing full spacings for each of the proposed channels. In support of this petition, the following is submitted:

1. This petition proposes to eliminate the mutual exclusivity between the two cut-off applications for new Class A FM facilities at Laramie, Wyoming.^{5/} At the present time there is no basis upon which to either designate the applications for a comparative hearing, or to otherwise resolve the mutual exclusivity. See e.g. Bechtel v. Federal Communications Commission, 10

3/ The allotment of Channel 224A to Laramie, Wyoming is proposed only in the event that one or more expressions of interest in an additional allotment are received.

4/ Channel 254A may be allotted at the reference coordinates for Laramie, Wyoming of 41° 18' 42" North Latitude, 105° 35' 06" West Longitude. Mount Rushmore Broadcasting, Inc. intends to specify a specific site for its operation on Channel 254A in an amendment to its pending application once this rule making is granted. Channel 224A, if needed for additional expressions of interest, may be allotted at a reference site 7.8 kilometers west of Laramie at 41° 18' 48" North Latitude, 105° 40' 39" West Longitude.

5/ In a now pending Joint Request for Approval of Settlement Agreement, Magic City Media, Inc. has agreed to dismiss its application for Channel 244A at Laramie, Wyoming (FCC File No. BPH-960520MJ) in exchange for consideration that does not exceed its reasonable and prudent expenses in filing and prosecuting its application.

F3d 875 (D.C. Cir. 1993). By the allotment of Channel 254A to Laramie, Wyoming, each pending application may be granted. If any additional expressions of interest are filed for an additional channel, Channel 224A may be allotted to Laramie, Wyoming.

2. This petition is consistent with the Commission's action in Cheyenne and Saratoga, Wyoming, 11 FCC Rcd. 1073 (1996) and Casper, Wyoming, 11 FCC Rcd. 1071 (1996), in which the Commission resolved conflicts between FM applicants by allotting additional channels to provide the communities with additional FM transmission services. As noted in Cheyenne and Saratoga, Wyoming, the additional allotments accommodated both applicants' requests for FM channels, and would avoid a comparative hearing for the originally applied for channel.

3. A like situation exists in this Channel 244A proceeding at Laramie, Wyoming in which two mutually exclusive applicants are now each pending for the same channel^{6/}. The window has opened and closed. Any other applicants that may have had an interest in applying for a Class A station at Laramie, Wyoming have already had an opportunity to do so. On this basis alone, it is submitted that the allotment of an additional channel to Laramie while allowing one of the applicants for Channel 244A to amend its application to specify a new channel while retaining cut-off protection would be fully consistent with the procedure established in Cheyenne and Saratoga, Wyoming, 11 FCC Rcd. 1073 (1996) and Casper, Wyoming, 11 FCC Rcd. 1071 (1996).

^{6/} As noted above, the additional application for Laramie, Wyoming of Magic City Media, Inc. is being dismissed pursuant to a settlement agreement.

4. The public interest would be well served by the early initiation of service to Laramie from each applicant. There would be a reduction in the burdens on the Commission's processing and hearing resources by the elimination of the need for the designation for a hearing of the mutually exclusive applications and the subsequent hearing.^{7/}

5. In the event that an interest is expressed by any other party in providing additional service to Laramie, Wyoming, there is an additional channel that may be allotted to Laramie, Wyoming to accommodate such an interest. The allotment of such an additional channel is in the public interest in the event an expression of interest is filed in this proceeding for such an additional channel. See e.g. Modification of FM and Television Station Licenses, 98 FCC 2d 916, 920 (1984). Making the additional channel available would be fully in accord with the strictures of Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945). As the Commission has noted in granting modification of licenses for existing stations to non-mutually exclusive channels, "the opportunity for filing for [an equivalent] channel is the only obligation [the Commission] must fulfill to comply with Ashbacker". See Helena, Montana, 50 RR 2d 70, 71 (1981).

6. Upon the allotment of Channel 254A to Laramie, Wyoming, and a reservation of Channel 254A for the application of Mount

^{7/} A grant of the allotments and relief requested in this joint filing enables the settlement of the mutually exclusive proceeding between the two parties for Channel 244A. Commission precedent generally favors settlements as a way of reducing the time, cost and uncertainty of protracted litigation. See generally RKO General, Inc. (KHJ-TV), 3 FCC Rcd 5057 (1988).

Rushmore Broadcasting, Inc. with cut-off protection, Mount Rushmore Communications, Inc. will promptly submit an appropriate amendment specifying Channel 254A for its proposed facility, and when authorized, construct a station promptly on Channel 254A at Laramie, Wyoming.

WHEREFORE, for the reasons above, it is respectfully requested that a rule making proceeding be commenced looking toward the allotment of Channel 254A to Laramie, Wyoming with a reservation of Channel 254A for the application of Mount Rushmore Broadcasting, Inc., which will leave the application of Rule Communications as a singleton on Channel 244A resolving the mutual exclusivity now existing on Channel 244A at Laramie, Wyoming.

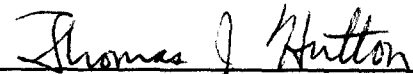
Respectfully submitted,

RULE COMMUNICATIONS

By: 
John F. Garziglia
Its Attorney

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MOUNT RUSHMORE BROADCASTING, INC.

By: 
Thomas J. Hutton
It Attorney

Dow Lohnes & Albertson, P.L.L.C.
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Suite 800
Washington, D.C. 20006
(202) 776-2738

November 25, 1996

PEPPER & CORAZZINI L.L.P.
Washington D.C. 20006

New Channel for Laramie, Wyoming
Mount Rushmore Broadcasting, Inc.

REFERENCE	CLASS A	DISPLAY DATES
41 18 42 N		DATA 11-01-96
105 35 06 W	Current rules spacings	SEARCH 11-26-96
----- CHANNEL 254 - 98.7 MHz -----		

CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
KSIDFM	254C1	Sidney	NE	93.3	200.95	200.0	0.95 <
KYGOFM	253C	Denver	CO	177.3	181.78	165.0	16.78
KYGOFM	253C	Denver	CO	168.7	182.92	165.0	17.92
KUADFM	256C1	Windsor	CO	138.9	98.36	75.0	23.36

PEPPER & CORAZZINI L.L.P.
Washington D.C. 20006

Additional Channel for Laramie, Wyoming
For Additional Expressions of Interest

REFERENCE	CLASS A	DISPLAY DATES
41 18 48 N		DATA 11-01-96
105 40 39 W	Current rules spacings	SEARCH 11-26-96
----- CHANNEL 224 - 92.7 MHz -----		

CALL	CH#	CITY	STATE	BEAR'	D-KM	R-KM	MARGIN
KMOR	225C	Scottsbluff	NE	68.6	165.06	165.0	0.06 <
KVOD	223C1	Greeley	CO	153.9	150.22	133.0	17.22
KIQZ	224A	Rawlins	WY	291.9	139.75	115.0	24.75
KZGO.C	224C	Glenwood Springs	CO	214.7	254.72	226.0	28.72

CERTIFICATE OF SERVICE

I, Tracey S. Westbrook, a secretary in the law firm of Pepper & Corazzini, L.L.P., do hereby certify that a true copy of the foregoing "Petition for Rule Making" was sent this 26th day of November, 1996 by hand delivery to the following:

Ms. Sharon P. McDonald
Allocations Branch
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W.
Fifth Floor
Washington, D.C. 20554


Tracey S. Westbrook